



EU-Tajikistan Human Rights Dialogue, 11 November 2020

Topics: criminal justice and the penitentiary system, torture and ill-treatment, human rights violations in the armed forces

INTRODUCTION

This briefing was prepared jointly by the NGO Coalition against Torture and Impunity in Tajikistan and Brussels-based International Partnership for Human Rights (IPHR).

It focuses on key concerns in the areas of criminal justice and the penitentiary system, torture and ill-treatment, and human rights violations in the armed forces.

Weaknesses in Tajikistan's protection of human rights have been felt particularly keenly during the COVID-19 pandemic and this briefing highlights relevant key concerns in different thematic chapters.

The document concludes with a set of key recommendations that the authors of this briefing urge the European Union to raise with the Tajikistani authorities.

For further details on the topics included in this briefing, refer to:

- *Human Rights Impact Assessment of the COVID-19 Response in Tajikistan*, IPHR, September 2020
- *Joint NGO submission under the Committee against Torture's follow-up procedure*, Coalition against Torture and Impunity in Tajikistan, Helsinki Foundation for Human Rights, IPHR, March 2020

CRIMINAL JUSTICE AND THE PENITENTIARY SYSTEM

On 25 June 2020, the Government of Tajikistan approved a Strategy for Reforming the Penitentiary System until 2030 which aims to humanize the system, develop programmes for the rehabilitation and resocialization of prisoners, improve mechanisms and measures for sentences that do not involve imprisonment, improve prison conditions, and ensure the safety of prison staff.

However, although the Strategy aims at improving the provision of medical treatment to prisoners, it unfortunately does not envisage the transfer of the penitentiary system to the Ministry of Health and Social Protection of Tajikistan.



After the Strategy was adopted, a working group was created to develop an action plan for its implementation, which included representatives of civil society groups.

Many recommendations from civil society were included in the draft action plan, for example: to develop a comprehensive prisoner rehabilitation programme; to improve the system for disciplinary punishments; to remove legislation on forced feeding and treatment; to develop a mechanism to investigate all deaths in the penitentiary system; and to set up a system of independent monitoring of places of deprivation of liberty. At the time of writing, the action plan is being finalized and will be sent to the Government for approval.

On 4 July 2020 President Emomali Rahmon signed amendments to the Criminal Procedure Code of Tajikistan, to the effect that detainees cannot be remanded in custody based solely on the gravity of the crime with which they have been charged.

Also on 4 July, the Law “On Legal Aid” was adopted, which provides for free legal aid in criminal, civil and administrative cases. It defines the procedures and principles governing legal aid, as well as types of free legal aid. To harmonize this law with existing legislation, amendments and additions were made to procedural legislation and the Law on the Bar and Advocacy.

Deprivation of liberty during the COVID-19 pandemic

During a pandemic, detention and imprisonment should only be used in relation to those persons for whom there is no appropriate alternative punishment. Significant support should be provided to those who come into contact with the criminal justice system during this unprecedented crisis. Appropriate measures must be well coordinated and swiftly implemented with the involvement of the prison administration, other relevant government agencies and society.

The NGOs issuing this briefing are concerned at significant shortcomings in citizens’ access to the criminal justice during the pandemic.

The authorities did not declare a lockdown, but imposed a range of other measures; citizens’ access to law enforcement agencies and the justice system was restricted particularly in the first months of the pandemic. Strict limits were introduced on receiving individual complaints, appeals and applications in person and offered practically no online alternatives. In July the situation improved but it is feared that access might be restricted again. The high costs and slow internet create additional barriers for the public trying to access online public services and information. Government websites are rarely updated. As a result, the courts, the prosecutor’s office and law enforcement agencies frequently violated the right of citizens to submit complaints and appeals. Allegations of crimes were not registered, procedural documents were not issued or were issued with a significant delay, and lawyers’ access to their clients was greatly restricted.

Due to the epidemiological situation, consideration of most civil cases has been postponed indefinitely. With regard to detainees, no alternative measures of restraint have been applied, such as house arrest or measures that do not involve deprivation of liberty. The most widely used measure of restraint continues to be detention.

Lawyers in Tajikistan have routinely been denied access to their clients as the administrative personnel of pre-trial detention facilities require written permission from the investigator or judge. During the

pandemic the GUIN (State Department for the Implementation of Punishment) of the Ministry of Justice prohibited lawyers from meeting with their clients even when they had written permission. The situation began to improve only in July 2020, when lawyers began to gain access to their clients, but investigative activities are still limited.

According to relatives of detainees, COVID-19 tests are not carried out in pre-trial and correctional facilities, but without a clear diagnosis, the medical treatment provided to treat symptoms such as high fever or respiratory infections is insufficient and protective measures inadequate.

Neither lawyers nor relatives have access to prisoners. The authorities justify this by referring to recommendations of the World Health Organisation (WHO) and the Ministry of Health and Social Protection of Tajikistan on limitations on visits and contact to prevent the spread of COVID-19. The authorities have not introduced any alternatives to such visits such as online meetings.

Juvenile justice

Since the last EU-Tajikistan Human Rights Dialogue in 2019 significant legislative improvements have been made, but further legal amendments are needed.

In January 2020 President Rahmon signed the Law “On Prevention of Juvenile Delinquency” (Law No. 1658), which stipulates that the National Commission on the Rights of the Child (NCRC, under the government) is responsible for coordinating its implementation. However, the NCRC is an interdepartmental body without a permanent staff which meets only on an irregular basis. Coordination mechanisms are lacking both in regard to the implementation of the law and to interagency communication.

As follow up on UN recommendations Article 32 of the Law “On the Procedures and Conditions for the Detention of Suspects, Accused and Defendants” was amended in January 2020. The article covers conditions of holding minors in custody. Part 6 now states “upon receipt of a report about the use of torture against a minor, a mandatory medical examination is carried out to determine the degree of physical injuries, signs of violence, torture and ill-treatment by at least three medical workers who are not subordinate to the place of detention of the minor suspect, accused or defendant.” Unfortunately, the article does not contain a requirement to conduct a psychological examination of the torture victim.

In accordance with the January 2020 amendments, the holding of minors in detention together with adults is prohibited (previously this was possible in exceptional cases with the permission of the prosecutor), as is holding a minor in a punishment cell, solitary confinement and guardhouse (part 2 of article 34 and part 2 of article 38, respectively).

However, the legislation fails to provide for effective measures of support and protection of child victims and witnesses of crime or their family members and does not take into account their best interests and needs. In particular, there is no access to permanent support services (material, legal, medical, social, etc.), and to services that facilitate the rehabilitation and reintegration of the child.

In its list of grounds for considering a case behind closed doors the Criminal Procedure Code does not mention the participation of an underage victim in the case. The Code provides no time limits for interrogating juvenile victims and witnesses, only stipulating that the participation of a defense lawyer in cases of juvenile suspects, accused or defendants is obligatory. Underage victims are not mentioned and are therefore not provided with defense lawyers.

TORTURE AND OTHER FORMS OF ILL-TREATMENT

Despite some progress, the NGO Coalition against Torture and Impunity in Tajikistan (further Coalition) continued to receive credible reports that detainees lacked access to fundamental legal safeguards and were subjected to torture and other forms of ill-treatment in 2019 and 2020. Members of the Coalition registered 52 new cases in 2019 and 30 cases from January to September 2020 of men, women and children who were allegedly subjected to torture or ill-treatment. These figures only provide part of the picture, as fear of reprisals and lack of trust in the criminal justice system prevent many victims and their relatives from complaining. As was previously the case, the vast majority of cases originate in the early stages of detention when detainees are often held incommunicado, as well as from the armed forces.

On 28 January 2020 the Prosecutor General's Office announced at a press conference that it had recorded a decline in complaints about torture: in 2018 it registered 48 complaints, in 2019 - 14. At two separate press conferences in July 2020, the Prosecutor General and the Ombudsman stated that they had received *eight* and *three* complaints respectively in the first half of 2020. According to the Prosecutor General, in one of these cases a criminal case was opened. According to the Ombudsman, none of the allegations received by his office was confirmed. In 2019, two criminal cases were opened and seven law enforcement officers were brought to justice and convicted by the courts. These statistics only cover crimes opened under Article 143.1 ("torture") although cases involving allegations of torture and other forms of ill-treatment are often opened under other articles of the Criminal Code such as "abuse of power", "exceeding official duties" or "failure to carry out or inappropriately carrying out duties". The authorities do not publish comprehensive statistics covering all these cases.

On 2 January 2020 President Rahmon signed a series of laws and amendments that significantly strengthened fundamental legal safeguards to prevent torture and other forms of ill-treatment in the criminal justice system.

Based on recommendations issued to Tajikistan by UN bodies, legal amendments (Law No. 1661) were adopted to Article 143-1 ("torture") of the Criminal Code, according to which sanctions for the crime of torture were increased. Furthermore, the actions or inaction of a "third party" were explicitly referred to: "1) Intentional infliction of physical and (or) mental suffering committed by the person conducting the inquiry or preliminary investigation, or by another official, either with their instigation or with the tacit consent or with their knowledge by another person in order to obtain information or confession from a tortured or third person or punish him for an act that he or a third party has committed or is suspected of committing, as well as to intimidate or coerce him or a third party or for any other reason based on discrimination of any kind."

The amendments also increased sanctions: in part 1 – from five to eight years in prison (previously it was: two to five years) with the deprivation of the right to hold certain positions or engage in certain activities for up to five years (previously up to three years); in part 2 – from eight to 12 years of imprisonment (previously from five to eight) with the deprivation of the right to occupy certain positions or engage in certain activities for a period of five to 10 years (previously: up to five years) and in part 3 – from 12 to 15 years imprisonment (previously from 10 to 15) with the deprivation of the right to hold certain positions or engage in certain activities for a period of 10 to 15 years (previously up to five years). Fines were also removed as possible sanctions under Article 143 Part 1 of the Criminal Code.

HUMAN RIGHTS VIOLATIONS IN THE ARMED FORCES

Torture, ill-treatment and hazing remain common in the army and no effective measures have been taken to prohibit and eliminate sexual, physical and psychological abuse.

Only the most severe cases resulting in the death of a soldier or grave long-term health problems are prosecuted. The vast majority of cases which do not leave serious physical injuries and do not lead to serious damage to health are not investigated.

This is due to the lack of effective complaints mechanisms and a culture in the military that discourages individuals from making complaints and appeals to law enforcement agencies and human rights organizations. Those who seek help are at risk of further reprisals. During monitoring visits to military units conducted in 2018 and 2019, the Office of Civil Freedoms observed that the soldiers' complaint boxes were located in places where they can be seen by commanding officials and other military personnel, or by video cameras. This practice is unsafe and may lead to reprisals against soldiers who use the complaint boxes.

Forced conscription

Illegal conscription round-ups and forced delivery to conscription centers, where medical examinations are conducted and from where young men are sent directly to military units continue. Round-ups take place twice a year, in the autumn and in the spring, on streets and public places throughout the country.

The Administrative Code and the Criminal Code of Tajikistan provide for punishment for failure to report for duty (Article 683 of the Administrative Code) and evasion of military service (Article 376 of the Criminal Code).

Since 2019 credible reports have been received from Sughd region that authorities arbitrarily detained numerous parents of young men of conscription age and threatened them with fines and imprisonment in order to put pressure on their sons to report to conscription centres. Many of these sons had gone to neighbouring countries as migrant workers.

From January to September 2020 the Tajikistani NGO Office of Civil Freedoms recorded the deaths of four soldiers on military service (including Hoshim Safarov, Nozim Guliyev, Ravshan Azizov and Ramazon Zoirov). Hoshim Safarov was reportedly subjected to severe beatings by two officers, which led to his death. An officer and two soldiers reportedly beat and humiliated Ramazon Zoirov so deeply that he took his own life.

COVID-19 in the armed forces

On 27 March 2020 the NGO Office of Civil Freedoms submitted questions to the General Staff of the Armed Forces of Tajikistan about preventive measures against the coronavirus. On 18 April 2020 the NGO received a reply stating that the Ministry of Defence had undertaken preventive measures including by disinfecting conscription centres, and that the Central Medical Commission of the Armed Forces and military hospitals carried out awareness raising among conscripts about preventive measures.

However, in practice preventive measures were not observed throughout the country and in some regions mass celebrations were held before sending off the conscripts to their military units. During the

spring conscription period (April/May) conscripts were not tested for coronavirus but were placed in quarantine upon arrival in the military units.

When covid infections drastically increased in May and June, many soldiers who showed severe respiratory symptoms were hospitalized in the Sughd region and doctors asked citizens to donate medication and food for them.

At the beginning of the autumn draft the Ministry of Defence announced that conscripts would be tested for coronavirus twice, first at the conscription centre and then in the military unit. Local NGOs have not been able to verify whether this procedure was followed in practice. The Ministry also publicly stated that conscripts infected with coronavirus would not be called up for military service, but those who have already recovered from the disease are not exempt.

RECOMMENDATIONS TO THE AUTHORITIES OF TAJIKISTAN

We have identified the following recommendations as particularly pressing and timely:

COVID-19: the right to complain/appeal, criminal justice, places of deprivation of liberty, armed forces

- Develop procedures that take into account protection measures against coronavirus and enable citizens to file complaints and appeals to courts, law enforcement agencies and prosecutor's offices.
- Use house arrest and other forms of restraint that do not involve deprivation of liberty whenever possible. This recommendation is in line with Recommendation 34a of the UN Human Rights Committee's Concluding Observations issued in August 2019.
- Develop procedures that take into account protection measures against coronavirus to ensure that lawyers can meet with their clients in pre-trial detention and in prison and that investigative activities can take place safely and without delay.
- Ensure that prisoners are able to communicate with their relatives, e.g. by providing access to online communication services.
- Ensure that sufficient protective equipment and medication is disseminated to medical personnel in all places of deprivation of liberty, military units, other semi-closed facilities, as well as special institutions for children, for the elderly, and publish statistics disaggregated by institution.
- Carry out systematic and regular testing for coronavirus among those serving in the military, persons deprived of liberty and personnel; swiftly isolate those infected; and consistently adhere to preventive measures in these institutions.

Juvenile justice

- Provide effective support and special protection to child victims and witnesses of crime and their family member and amend the legislation accordingly.
- Amend the Criminal Procedure Code to ensure that trials are held behind closed doors in cases involving underage victims of crime; to introduce time limits for interrogating juvenile victims and witnesses; and to ensure that underage victims are provided with a defense lawyer.